IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Crl.Rev.Pet.No. 4268 of 2006(C)

CMP.2300/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, NEYYATTINKARA

REVN. PETITIONER: COMPLAINANT

VINOD SHANKAR, AGED 26,
W/O.GOPALAKRISHNAN NAIR, PRASANNA VILAS,
THALAYAL, BALARAMAPURAM, NEYYATTINKARA.

BY ADV. SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP

RESPONDENTS: ACCUSED

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1. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. VISHNUKUMARY, AGED 42,
D/O.OMANA AMMA, NAYANAM HOUSE,
PAKALOOR, KALLIYOOR, PALLICHAL P.O.,
NEYYATTINKARA.

BY PUBLIC PROSECUTOR SHRI C.M. KAMMAPPU R1

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 4268 OF 2006

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Dated this the 30th day of January, 2007

O R D E R

Heard learned counsel for petitioner and Public Prosecutor. Criminal Revision Petition itself is heard and disposed of.

2. Petitioner filed a complaint against one Smt.Vishnukumary (accused) alleging that she had borrowed a sum of Rs.25,000/- from him and issued a cheque in discharge of a legally recoverable debt. It is alleged that when the cheque was presented for payment, the same was dishonoured and returned for want of sufficient funds in the account maintained by the accused with the Bank. A notice was issued to the accused demanding repayment of the amount in the last known address of the accused. But that was returned unserved. It was further averred that accused was absconding and as such notice could not be served on her. Learned Magistrate dismissed the complaint only on the ground that there is no averment in the complaint that the accused failed to repay the cheque amount even after the receipt of the Advocate notice.

3. In this case it is specifically averred that notice issued to the accused could not be served on her as she was absconding. It is also averred that in spite of earnest efforts to serve notice in person on the accused in the last known address the same could not be served as she was absconding. So even if there is no averment in the complaint to the effect that the accused did not repay the amount even after receipt of the lawyer notice, the same will not make any difference. Averments are sufficient to hold that there was no repayment. The reasons stated by the learned Magistrate for dismissing the complaint are unsustainable.

4. In the result, this Criminal Revision Petition is allowed. Order passed by the Judicial First Class Magistrate No.III, Neyyattinkara dismissing the C.M.P. is hereby set aside. Learned Magistrate is directed to take the complaint back to file and dispose of the same in accordance with law.

Office is directed to return the original records, if any, received from the Magistrate along with a copy of this order.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO.

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O R D E R

4TH JANUARY, 2007